

v. *Wray*, No. 23-CV-12834, 2023 WL 7646426, at *1 (E.D. Mich. Nov. 14, 2023) (“Because Plaintiff’s IFP application is denied, the Court cannot screen his Complaint under 28 U.S.C. § 1915(e).”) (citing *Benson*, 179 F.3d at 1016).

In screening the complaint, the magistrate judge concluded that Defendant is entitled to Eleventh Amendment immunity [Doc. 5, pg. 4]. Plaintiff has not objected to that conclusion. The Sixth Circuit has held that “the Eleventh Amendment is a true jurisdictional bar that courts can ... raise *sua sponte* at any stage in litigation, and, once raised as a jurisdictional defect, must be decided before the merits.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015). Because Defendant is entitled to Eleventh Amendment immunity, this Court lacks jurisdiction. Dismissal is appropriate on that ground. *See* Fed.R.Civ.P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Accordingly, Plaintiff’s Complaint [Doc. 2] is **DISMISSED WITHOUT PREJUDICE**. *See Carmichael v. City of Cleveland*, 571 F. App’x 426, 435 (6th Cir. 2014) (“Dismissals for lack of jurisdiction based on Eleventh Amendment immunity should be made without prejudice.”). The R&R regarding the Application to Proceed in Forma Pauperis [Doc. 1] is **ADOPTED** and is accordingly **DENIED**.

A separate judgment shall enter.

SO ORDERED:

s/ Clifton L. Corker
United States District Judge